



House of Representatives

General Assembly

File No. 817

January Session, 2015

Substitute House Bill No. 6738

House of Representatives, May 14, 2015

The Committee on Finance, Revenue and Bonding reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONCERNING THE FEDERAL ACHIEVING A BETTER LIFE
EXPERIENCE ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2015*) As used in this section
2 and sections 2 to 8, inclusive, of this act:

3 (1) "Achieving a better life experience account" or "ABLE account"
4 means an account established and maintained pursuant to sections 2 to
5 8, inclusive, of this act for the purposes of paying the qualified
6 disability expenses related to the blindness or disability of a
7 designated beneficiary.

8 (2) "Contracting state" means a state without a qualified ABLE
9 program that has entered into a contract with the State Treasurer or
10 other officer of this state to provide residents of the contracting state
11 with access to qualified ABLE programs.

12 (3) "Deposit" means a deposit, payment, contribution, gift or other
13 transfer of funds.

14 (4) "Depositor" means any person making a deposit into an ABLE
15 account pursuant to a participation agreement.

16 (5) "Designated beneficiary" means any individual state resident or
17 resident of a contracting state originally designated in the participation
18 agreement who is an eligible individual and is the owner of an ABLE
19 account.

20 (6) "Disability certification" means, with respect to an individual, a
21 certification to the satisfaction of the Secretary of the Treasury of the
22 United States by the individual or the parent or guardian of the
23 individual that (A) certifies that (i) the individual has a medically
24 determinable physical or mental impairment, that results in marked
25 and severe functional limitations, and that can be expected to result in
26 death or that has lasted or can be expected to last for a continuous
27 period of not less than twelve months, or is blind within the meaning
28 of Section 1614(a)(2) of the Social Security Act, and (ii) such
29 impairment or blindness occurred before the date on which the
30 individual attained the age of twenty-six, and (B) includes a copy of
31 the individual's diagnosis relating to the individual's relevant
32 impairment or blindness that is signed by a physician who is licensed
33 pursuant to chapter 370 of the general statutes.

34 (7) "Eligible individual" means an individual who is entitled to
35 benefits during a taxable year based on blindness or disability under
36 Title II or XVI of the Social Security Act, and such blindness or
37 disability occurred before the date on which the individual attained
38 the age of twenty-six, provided a disability certification with respect to
39 such individual is filed with the State Treasurer for such taxable year.

40 (8) "Federal ABLE Act" means the federal ABLE Act of 2014, P.L.
41 113-295, as amended from time to time.

42 (9) "Participation agreement" means an agreement between the trust

43 established pursuant to section 2 of this act and depositors that
44 provides for participation in an ABLE account for the benefit of a
45 designated beneficiary.

46 (10) "Qualified disability expenses" means any expenses related to
47 an eligible individual's blindness or disability that are made for the
48 benefit of an eligible individual who is the designated beneficiary,
49 including the following expenses: Education, housing, transportation,
50 employment training and support, assistive technology and personal
51 support services, health, prevention and wellness, financial
52 management and administrative services, legal fees, expenses for
53 oversight and monitoring, funeral and burial expenses, and other
54 expenses that are approved by the Secretary of the Treasury of the
55 United States under regulations adopted by the Secretary pursuant to
56 the federal ABLE Act.

57 Sec. 2. (NEW) (*Effective October 1, 2015*) (a) (1) The State Treasurer
58 shall establish a qualified ABLE program pursuant to the federal ABLE
59 Act and sections 1 to 8, inclusive, of this act. Under the program: (A)
60 The State Treasurer shall administer individual ABLE accounts to
61 encourage and assist eligible individuals and their families in saving
62 private funds to provide support for eligible individuals, and (B) a
63 person may make contributions to an individual ABLE account to meet
64 the qualified disability expenses of the designated beneficiary of the
65 account.

66 (2) For the purposes of the program, there is established within the
67 Office of the State Treasurer the Connecticut Achieving A Better Life
68 Experience Trust. The trust shall constitute an instrumentality of the
69 state and shall perform essential governmental functions, as provided
70 in sections 1 to 8, inclusive, of this act. The trust shall receive and hold
71 all payments and deposits intended for ABLE accounts as well as gifts,
72 bequests, endowments or federal, state or local grants and any other
73 funds from public or private sources and all earnings, until disbursed
74 in accordance with sections 1 to 8, inclusive, of this act.

75 (b) (1) The amounts on deposit in the trust shall not constitute

76 property of the state and the trust shall not be construed to be a
77 department, institution or agency of the state. Amounts on deposit in
78 the trust shall not be commingled with state funds and the state shall
79 have no claim to or against, or interest in, such amounts, except as
80 provided in subdivision (2) of this subsection. Any contract entered
81 into by, or any obligation of, the trust shall not constitute a debt or
82 obligation of the state and the state shall have no obligation to any
83 designated beneficiary or any other person on account of the trust and
84 all amounts obligated to be paid from the trust shall be limited to
85 amounts available for such obligation on deposit in the trust. The
86 amounts on deposit in the trust may only be disbursed in accordance
87 with the provisions of sections 1 to 8, inclusive, of this act.

88 (2) The trust shall continue in existence as long as it holds any
89 deposits or other funds or has any obligations and until its existence is
90 terminated by law, and upon termination of the trust, any unclaimed
91 assets of the trust shall return to the state. Property of the trust shall be
92 governed by section 3-61a of the general statutes.

93 (c) The State Treasurer shall be responsible for the receipt,
94 maintenance, administration, investment and disbursements of
95 amounts from the trust. The trust shall not receive deposits in any
96 form other than cash. No depositor or designated beneficiary may
97 direct the investment of any contributions or amounts held in the trust
98 other than in the specific fund options provided for by the trust and
99 shall not direct investments in such specific fund options more than
100 two times in any calendar year. No interest, or portion of any interest,
101 in the program shall be used as security for a loan.

102 (d) A person may make deposits to an ABLE account to meet the
103 qualified disability expenses of the designated beneficiary of the
104 account, provided the trust and deposits meet the other requirements
105 of this section, the federal ABLE Act and any regulations adopted
106 pursuant to the federal ABLE Act by the Secretary of the Treasury of
107 the United States.

108 (e) On or before December 31, 2016, and annually thereafter, the

109 State Treasurer shall submit (1) in accordance with the provisions of
110 subsection (a) of section 3-37 of the general statutes, a report to the
111 Governor on the operations of the trust, including the receipts,
112 disbursements, assets, investments and liabilities and administrative
113 costs of the trust for the prior fiscal year, and (2) in accordance with the
114 provisions of section 11-4a of the general statutes, a report on the trust
115 to the joint standing committees of the General Assembly having
116 cognizance of matters relating to finance and public health, and shall
117 make such report available to each depositor and designated
118 beneficiary. The report required under subdivision (2) of this
119 subsection shall include, but need not be limited to: (A) The number of
120 ABLE accounts; (B) the total amount of contributions to such accounts;
121 (C) the total amount and nature of distributions from such accounts;
122 and (D) a description of issues relating to the abuse of such accounts, if
123 any.

124 Sec. 3. (NEW) (*Effective October 1, 2015*) The State Treasurer, on
125 behalf of the trust and for purposes of the trust, may:

126 (1) Receive and invest moneys in the trust in any instruments,
127 obligations, securities or property in accordance with section 4 of this
128 act;

129 (2) Establish consistent terms for each participation agreement, bulk
130 deposit, coupon or installment payments, including, but not limited to,
131 (A) the method of payment into an ABLE account by payroll
132 deduction, transfer from bank accounts or otherwise, (B) the
133 termination, withdrawal or transfer of payments under an ABLE
134 account, including transfers to or from a qualified ABLE program
135 established by another state pursuant to the federal ABLE Act, (C)
136 penalties for distributions not used or made in accordance with the
137 federal ABLE Act, and (D) the amount of any charges or fees to be
138 assessed in connection with the administration of the trust;

139 (3) Enter into one or more contractual agreements, including
140 contracts for legal, actuarial, accounting, custodial, advisory,
141 management, administrative, advertising, marketing and consulting

142 services for the trust and pay for such services from the gains and
143 earnings of the trust;

144 (4) Procure insurance in connection with the trust's property, assets,
145 activities or deposits or contributions to the trust;

146 (5) Apply for, accept and expend gifts, grants or donations from
147 public or private sources to enable the Connecticut Achieving A Better
148 Life Experience Trust to carry out its objectives;

149 (6) Sue and be sued;

150 (7) Establish one or more funds within the trust and maintain
151 separate ABLE accounts for each designated beneficiary; and

152 (8) Take any other action necessary to carry out the purposes of
153 sections 1 to 8, inclusive, of this act and incidental to the duties
154 imposed on the State Treasurer pursuant to said sections.

155 Sec. 4. (NEW) (*Effective October 1, 2015*) Notwithstanding the
156 provisions of sections 3-13 to 3-13h, inclusive, of the general statutes,
157 the State Treasurer shall invest the amounts on deposit in the trust in a
158 manner reasonable and appropriate to achieve the objectives of the
159 trust, exercising the discretion and care of a prudent person in similar
160 circumstances with similar objectives. The State Treasurer shall give
161 due consideration to the rate of return, risk, term or maturity,
162 diversification of the total portfolio within the trust, liquidity,
163 projected disbursements and expenditures and the expected payments,
164 deposits, contributions and gifts to be received. The State Treasurer
165 shall not require the trust to invest directly in obligations of the state or
166 any political subdivision of the state or in any investment or other
167 fund administered by the State Treasurer. The assets of the trust shall
168 be continuously invested and reinvested in a manner consistent with
169 the objectives of the trust until disbursed for qualified disability
170 expenses, expended on expenses incurred by the operations of the
171 trust or refunded to the depositor or designated beneficiary on the
172 conditions provided in the participation agreement.

173 Sec. 5. (NEW) (*Effective October 1, 2015*) Participation in the trust and
174 the offering, sale and solicitation of opportunities to participate in the
175 trust are exempt from sections 36b-16 and 36b-22 of the general
176 statutes, provided the State Treasurer has obtained written advice of
177 counsel or written advice from the Securities Exchange Commission,
178 or both, that the trust and the offering, sale and solicitation of
179 opportunities to participate in the trust are not subject to federal
180 securities laws.

181 Sec. 6. (NEW) (*Effective October 1, 2015*) The property of the trust and
182 the earnings on the trust shall be exempt from taxation by the state and
183 political subdivisions of the state.

184 Sec. 7. (NEW) (*Effective October 1, 2015*) The state pledges to
185 depositors, designated beneficiaries and any party who enters into
186 contracts with the trust, pursuant to the provisions of sections 1 to 8,
187 inclusive, of this act, that the state will not limit or alter the rights
188 under said sections vested in the trust or contract with the trust until
189 such obligations are fully met and discharged and such contracts are
190 fully performed on the part of the trust, provided nothing in this
191 section shall preclude such limitation or alteration if adequate
192 provision is made by law for the protection of such depositors and
193 designated beneficiaries pursuant to the obligations of the trust or
194 parties who entered into such contracts with the trust. The trust, on
195 behalf of the state, may include a description of such pledge and
196 undertaking for the state in participation agreements and such other
197 obligations or contracts.

198 Sec. 8. (NEW) (*Effective October 1, 2015*) The State Treasurer shall
199 take any action necessary to ensure that the trust complies with all
200 applicable requirements of state and federal laws, rules and
201 regulations to the extent necessary for the trust to constitute a qualified
202 ABLE program and be exempt from taxation under the federal ABLE
203 Act, and any regulations adopted pursuant to the federal ABLE Act by
204 the Secretary of the Treasury of the United States.

205 Sec. 9. (NEW) (*Effective October 1, 2015*) (a) Notwithstanding any

206 provision of the general statutes, moneys invested in an individual
 207 ABLE account, contributions to an individual ABLE account and
 208 distributions for qualified disability expenses pursuant to sections 1 to
 209 8, inclusive, of this act, shall be disregarded for purposes of
 210 determining an individual's eligibility for assistance under the
 211 temporary family assistance program, as described in section 17b-112
 212 of the general statutes, programs funded under the federal Low
 213 Income Home Energy Assistance Program block grant and any other
 214 federally funded assistance or benefit program, including, but not
 215 limited to, the state's medical assistance program, whenever such
 216 program requires consideration of one or more financial circumstances
 217 of an individual for the purpose of determining the individual's
 218 eligibility to receive any assistance or benefit or the amount of any
 219 assistance or benefit.

220 (b) Notwithstanding any provision of the general statutes, no
 221 moneys invested in the ABLE accounts shall be considered to be an
 222 asset for purposes of determining an individual's eligibility for need-
 223 based, institutional aid grants offered to an individual at the public
 224 eligible educational institutions in the state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	New section
Sec. 2	October 1, 2015	New section
Sec. 3	October 1, 2015	New section
Sec. 4	October 1, 2015	New section
Sec. 5	October 1, 2015	New section
Sec. 6	October 1, 2015	New section
Sec. 7	October 1, 2015	New section
Sec. 8	October 1, 2015	New section
Sec. 9	October 1, 2015	New section

PRI Joint Favorable Subst. C/R

FIN

FIN Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Department of Revenue Services	GF - Revenue Loss	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill specifies that funds deposited in the trust are exempt from state and municipal taxation. To the extent funds deposited in the trust would otherwise have been deposited in a taxable account, this results in a potential future revenue loss at the time any such deposit is withdrawn.

The bill is not expected to result in a cost to the Office of the State Treasurer because the agency has indicated that it will offer the trust through an outside vendor. The trust costs to the vendor will be related to custodial, marketing, accounting and various other services. These costs will be paid out of the proceeds of investments made by the trust.

The bill is not anticipated to result in a fiscal impact to the Department of Social Services based on the following factors: (1) the bill does not change eligibility for state and federal programs, (2) it is assumed an individual or contributor will not contribute funds to the ABLE account if contributions would jeopardize eligibility for state or federal programs, and (3) it is assumed an eligible individual will not use contributions to the fund for services already covered by state or federal programs.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Office of the State Treasurer

OLR Bill Analysis**sHB 6738*****AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING THE FEDERAL ACHIEVING A BETTER LIFE EXPERIENCE ACT.*****SUMMARY:**

This bill requires the state treasurer to (1) establish a qualified Achieving A Better Life Experience (ABLE) program, as permitted by federal law, and (2) administer individual ABLE accounts to encourage and help eligible individuals and families save private funds to pay for qualifying expenses related to disability or blindness. It establishes the Connecticut ABLE Trust, administered by the state treasurer, to receive and hold funds intended for ABLE accounts. It exempts money in the trust and interest earnings on it from state and local taxation while in the trust and requires the treasurer to ensure that funds are kept exempt from federal taxation pursuant to federal law.

Under the bill, funds invested in, contributed to, or distributed from an ABLE account must be disregarded when determining an individual's eligibility for assistance under federally funded assistance or benefit programs, including:

1. the Temporary Family Assistance program;
2. programs funded under the federal Low Income Home Energy Assistance Program; and
3. the state's medical assistance program (i.e., HUSKY and Medicaid).

The bill also prohibits the state's public colleges and universities from considering funds invested in ABLE accounts when determining

eligibility for need-based institutional aid. In general, institutional financial aid consists of aid originating from the institution and excludes federal or state financial aid awarded to students.

EFFECTIVE DATE: October 1, 2015

ELIGIBILITY

§§ 1 & 2 — *Designated Beneficiary*

The bill requires the state treasurer to establish a qualified ABLE program pursuant to the federal ABLE Act (see BACKGROUND) and administer individual ABLE accounts to pay a designated beneficiary's qualified disability expenses. It allows anyone to contribute to an individual ABLE account to meet qualified disability expenses of the account's designated beneficiary. The designated beneficiary must:

1. own an individual ABLE account;
2. be entitled to benefits, based on blindness or disability, under federal Social Security Disability Insurance (SSDI) or federal Supplemental Security Income (SSI) during a taxable year;
3. have acquired his or her disability or became blind before age 26;
4. reside in Connecticut or in a state that (a) does not have a qualified ABLE program and (b) has entered into a contract with Connecticut's state treasurer or other officer to allow its residents to access qualified ABLE programs; and
5. have a disability certification filed with the state treasurer for the taxable year.

Under the bill, a disability certification by an individual or his or her parent or guardian must, to the satisfaction of the U.S. secretary of the Treasury:

1. certify the individual is (1) blind or (2) has a medically determinable physical or mental impairment that (a) results in

marked and severe functional limitations and (b) will last for at least 12 months;

2. certify the impairment or blindness occurred before age 26; and
3. include a copy of the individual's diagnosis of impairment or blindness, signed by a licensed physician.

§ 1 — Qualified Disability Expenses

Under the bill, qualified disability expenses are (1) made for the designated beneficiary's benefit and (2) related to his or her blindness or disability. Expenses include:

1. education,
2. housing,
3. transportation,
4. employment training and support,
5. assistive technology and personal support services,
6. health,
7. prevention and wellness,
8. financial management and administrative services,
9. legal fees,
10. expenses for oversight and monitoring,
11. funeral and burial expenses, and
12. other expenses approved by the U.S. Treasury secretary under regulations adopted under the federal ABLE act.

TRUST REQUIREMENTS

Under the bill, the trust is an instrumentality of the state

performing essential government functions, but it is not a state agency. It receives and holds all deposits, gifts, bequests, endowments, government grants, and other sources of funds and earnings on those funds, until disbursed to a designated beneficiary for qualified disability expenses. Depositors and beneficiaries may direct the investment of their contributions or amounts in the trust up to twice annually by choosing specific fund options that the treasurer may establish within the trust.

Deposits must be made in cash. Funds in the trust are not state property. They cannot be combined with state funds, and the state has no claim on them, unless the trust is terminated, in which case any unclaimed assets return to the state under the unclaimed property law. The trust must continue to exist as long as it has deposits or obligations and until terminated by law.

§ 3 — *Treasurer's Authority*

Under the bill, on behalf of the trust and to carry out its purposes, the state treasurer may:

1. receive and invest the trust's money;
2. establish consistent terms for the operation of the trust, such as (a) method of payment, (b) termination, withdrawal, or transfer of payments (including to another state's ABLE program), (c) penalties for improper use of funds, and (d) administration charges or fees;
3. enter contractual agreements for services for the trust and pay for them with the trust's earnings;
4. procure insurance;
5. apply for and receive public and private gifts, grants, and donations;
6. sue and be sued;

7. establish funds within the trust and maintain separate ABLE accounts for each designated beneficiary; and
8. take other necessary action to carry out the bill's purposes.

§ 4 — Investment

The bill requires the state treasurer to (1) invest the trust's funds in a reasonable way to achieve the trust's objectives; (2) exercise a prudent person's care and discretion; and (3) consider such things as rate of return, risk, maturity, portfolio diversification, liquidity, projected disbursements and expenditures, and expected deposits and other gifts. The bill prohibits the treasurer from requiring the trust to invest directly in (1) obligations of the state or any of its political subdivisions or (2) investments or other funds administered by the treasurer.

Under the bill, the treasurer must continuously invest and reinvest the trust's assets until they are (1) disbursed for qualified disability expenses; (2) spent on operating the trust; or (3) refunded to the depositor or the designated beneficiary in accordance with the participation agreement, which is the agreement between the trust and those making deposits into an ABLE account to benefit a designated beneficiary.

§ 5 — Offering and Solicitation

Under the bill, material intended for distribution to prospective investors does not have to be filed with the banking commissioner and investments do not have to be registered with him. But the bill requires the treasurer to get written advice from counsel or the Securities Exchange Commission that the trust and participation in it are not subject to federal securities laws.

§ 2 — Reports

By December 31, 2016, the bill requires the treasurer to begin including in her annual reports to the governor information on the operations of the trust, including receipts, disbursements, assets, investments and liabilities, and administrative costs for the prior fiscal

year.

By that date, she must also begin submitting annual reports to the Finance, Revenue and Bonding and Public Health committees and making the reports available to depositors and designated beneficiaries. The reports must include:

1. the number of ABLE accounts,
2. the total amount of contributions to ABLE accounts,
3. the total amount and nature of distributions from ABLE accounts, and
4. a description of any issues relating to any abuse of ABLE accounts.

§ 8 — Federal Tax Exemption

The bill requires the treasurer to do what is necessary to ensure that the trust complies with federal and state laws so that it constitutes a qualified state ABLE program exempt from federal tax. Under Section 529 (a) of the federal Internal Revenue Code, qualified ABLE programs are generally exempt from income tax to the extent that they do not exceed the qualified disability expenses of the designated beneficiary.

§ 7 — State Pledge

The bill allows the trust to include a pledge in its participation agreements and other contracts that the state will not alter the rights of participants until all of its obligations are discharged and contracts performed, unless the law makes adequate provision for their protection.

BACKGROUND

Federal Law

The 2014 federal ABLE Act (PL 113-295) allows states to establish and maintain qualified ABLE programs to:

1. encourage and help individuals and families save private funds

to support individuals with disabilities to maintain health, independence, and quality of life and

2. provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, Medicaid, SSI, employment, and other sources.

Generally, under federal law, qualified ABLE programs are exempt from federal taxation, and funds in or distributed from ABLE accounts cannot be considered when determining eligibility for benefits or assistance programs authorized by federal law.

COMMITTEE ACTION

Program Review and Investigations Committee

Joint Favorable Substitute Change of Reference

Yea 9 Nay 0 (03/13/2015)

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 49 Nay 0 (04/30/2015)